

Message

From: Mears, Mary [Mears.Mary@epa.gov]
Sent: 1/19/2021 10:06:46 PM
To: Mugdan, Walter [Mugdan.Walter@epa.gov]; Schaaf, Eric [Schaaf.Eric@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Williamson, Anahita [Williamson.Anahita@epa.gov]
CC: Rodriguez, Elias [Rodriguez.Elias@epa.gov]
Subject: AG Grewal: New Jersey Files Nine New Lawsuits Challenging Trump Administration's Last Minute Environmental Rollbacks

Nonresponsive Deliberative/Ex. 5 relating to reporter inquiry

From: Blake Nelson <BNelson@njadvancemedia.com>
Sent: Tuesday, January 19, 2021 5:02 PM
To: Mears, Mary <Mears.Mary@epa.gov>
Cc: Rodriguez, Elias <Rodriguez.Elias@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
Subject: FW: AG Grewal: New Jersey Files Nine New Lawsuits Challenging Trump Administration's Last Minute Environmental Rollbacks

Hi Mary,

I know the EPA generally doesn't comment on lawsuits, but I never want to assume going forward— especially since New Jersey's AG just filed 9 new complaints, alleging the EPA is rushing through several rule changes.

Do you want to weigh in on any of these accusations?

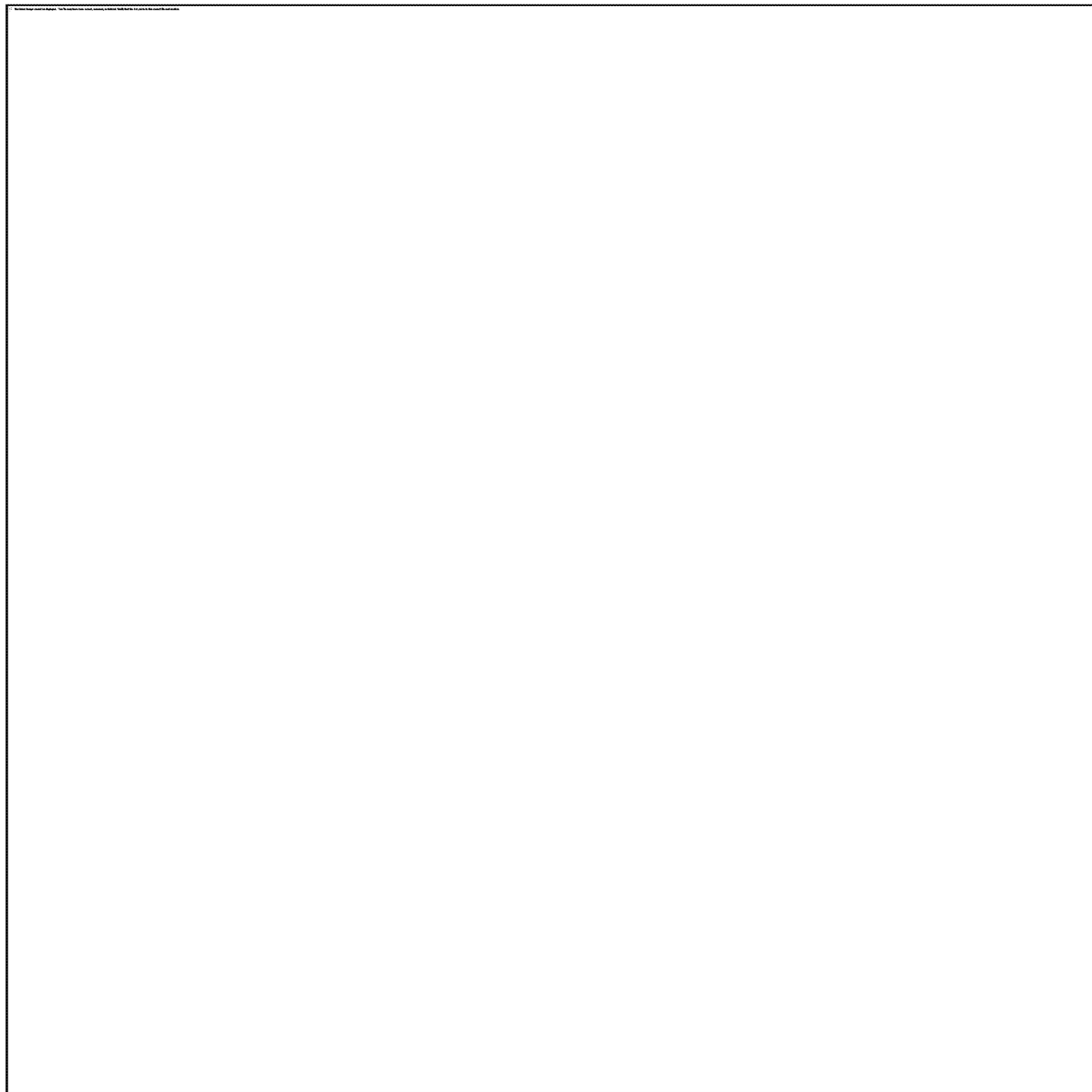
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From: OAG Press <OAGPress@njoag.gov>
Reply-To: "OAGPress@njoag.gov" <OAGPress@njoag.gov>
Date: Tuesday, January 19, 2021 at 4:42 PM
To: Blake Nelson <BNelson@njadvancemedia.com>
Subject: AG Grewal: New Jersey Files Nine New Lawsuits Challenging Trump Administration's Last Minute Environmental Rollbacks



Gurbir S. Grewal, *Attorney General*

Division of Law

Michelle L. Miller, *Director*

For Immediate Release:

January 19, 2021

Further Information Contact:

Lee Moore, 609-292-4791

AG Grewal: New Jersey Files Nine New Lawsuits Challenging Trump Administration's Last Minute Environmental Rollbacks

Links to documents at end of this release

TRENTON – On President Trump's last full day in office, Attorney General Gurbir S. Grewal announced that New Jersey has filed nine new lawsuits challenging a series of environmental rollbacks rushed through during the waning days of the Trump Administration. The announcement comes on the heels of a major litigation victory, in which a federal appeals court agreed with New Jersey that the U.S. Environmental Protection Agency (EPA) acted unlawfully in 2019 when it repealed the Obama Administration's Clean Power Plan for addressing greenhouse gas emissions from power plants.

The nine lawsuits announced today touch on issues including protections for clean air, energy efficiency requirements for appliances, and measures to protect migratory birds and endangered wildlife species.

All nine challenges to the Trump Administration's "midnight rules" are being pursued by coalitions of states that share New Jersey's commitment to protecting the environment and public health. Attorney General Grewal is leading one of the six lawsuits, which challenges a rule that weakens Clean Air Act protections for major sources of emissions.

"The environmental impacts of the Trump Administration's lame duck rulemaking will be devastating if all of these rules remain in place," said Attorney General Grewal. "So last week, we promised that the last-minute rules would not go unchecked. With today's lawsuits, we're making good on that commitment. Between these lawsuits and the policy changes expected in the Biden Administration, the Trump Administration's environmentally disastrous actions won't last long."

"We will not allow Trump loyalists to continue to undermine science and threaten our State's and nation's air, water and wildlife in the waning hours of this Administration," said Shawn M. LaTourette, Acting Commissioner of the New Jersey Department of Environmental Protection. "While we are confident that brighter days are ahead for environmental protection, New Jersey will continue to join our sister states in fighting the short-sighted Trump legacy of environmental ignorance and degradation."

The federal rules challenged in the nine environmental protection lawsuits filed by Attorney General Grewal since Friday, January 15, are:

- An EPA rule that will allow major sources of hazardous air pollutants to reclassify themselves as less regulated "area sources" under the Clean Air Act, abandoning the "once-in, always-in" policy that had been in place for 25 years. Among other things, the state attorneys general contend that the rule increases Americans' risk of cancer and other serious health problems traceable to hazardous air pollutants like cyanide and hydrochloric acid by reducing the number of pollution sources using maximum available control technology; violates the Clean Air Act and the Administrative Procedure Act; and is unsupported by

the necessary evidence and analysis. The petition for review on behalf of 13 states and the cities of New York and Chicago was filed in the U.S. Court of Appeals for the District of Columbia Circuit.

- An EPA rule on greenhouse gas emission standards for airplanes that fails to adequately mitigate public health and environmental harms from such emissions, including the environmental justice impacts on residents living near airports, which disproportionately include disadvantaged minority and low-income communities. Among other things, the attorneys general have argued that EPA's rule does not reflect a reasonable assessment of aircraft-related pollution and the technological feasibility of more effective emissions controls. The petition for review on behalf of 12 States and the District of Columbia was filed in the U.S. Court of Appeals for the District of Columbia Circuit.
- An EPA rule maintaining the national ambient air quality standard (NAAQS) for ozone at a level that fails to protect public health and welfare based on the existing scientific evidence. State attorneys general have alleged that the EPA's decision not to strengthen the primary or secondary ozone NAAQS is the result of a flawed and hasty process that gave short shrift to the evidence showing that more protective standards are necessary to protect human health and public welfare. The petition for review on behalf of 15 states, the District of Columbia, and the City of New York was filed in the U.S. Court of Appeals for the District of Columbia Circuit/
- An EPA rule that will skew how the agency weighs the costs and benefits of rules under the Clean Air Act by excluding important public health benefits from the analysis while inflating the costs. In particular, the rule will cause future EPA rules to undercount the harmful effects of carbon emissions that lead to climate change and distort the value of "co-benefits," the often-substantial benefits of rules that addresses more than one pollutant. Among other flaws, this biased approach is contrary to EPA's core mission to protect human health and the environment, as well as to economic principles and the legal requirement that EPA base its standards on the best available information. The petition for review on behalf of 17 States, the District of Columbia, and the City of New York was filed in the U.S. Court of Appeals for the District of Columbia Circuit.
- An EPA rule weakening the Clean Air Act's new source review program for major modifications to existing major stationary sources of emissions. The rule will subject New Jersey residents to lower air quality and will make it more difficult for downwind States like New Jersey to attain or maintain federal air quality standards. The petition for review on behalf of seven states and the District of Columbia was filed in the U.S. Court of Appeals for the District of Columbia Circuit.
- Rules from the U.S. Fish and Wildlife Service and National Marine Fisheries Service that will make it harder to protect endangered and threatened species by narrowly defining critical "habitat" and establishing a skewed process for excluding areas from critical habitat designations. The lawsuit alleges that the rules violate the Endangered Species Act, the National Environmental Policy Act, and the Administrative Procedure Act; lack a reasoned explanation; and violate procedural requirements for rulemaking, among other flaws. The complaint on behalf of 18 States and the City of New York was filed in the U.S. District Court for the Northern District of California.
- A rule from the U.S. Fish and Wildlife Service that rolls back protections for migratory birds. The lawsuit alleges that the rule will increase the risk of death for birds that migrate within and through New Jersey and other States, depriving residents of scientific, recreational, and birdwatching opportunities, and undermining the ecological balance that the birds help maintain, including by controlling insects and rodents, pollinating, and dispersing seeds. The complaint on behalf of 12 States was filed in

the U.S. District Court for the Southern District of New York and alleges that the rule violates the Endangered Species Act, other laws, and principles of international comity.

- An EPA rule that unlawfully and arbitrarily limits the scientific evidence that the agency can consider when adopting rules and standards to protect human health and the environment. Rather than enhance the integrity of EPA's regulations, the rule undermines EPA's core responsibilities to implement environmental laws through use of the "latest," "generally accepted," and "best available" science. The lawsuit alleges that in adopting the rule, EPA not only violated its duties under those laws but also exceeded its legal authority, acted arbitrarily and capriciously, and impermissibly made the rule effective immediately. The complaint on behalf of 18 states, the cities of New York, Los Angeles and Chicago, and King County, Washington as filed in the U.S. District Court for the Southern District of New York.
- A U.S. Department of Energy rule that will weaken federal energy efficiency standards for consumer appliances and industrial equipment by making it easier for manufacturers to obtain waivers from product testing requirements. While national efficiency standards have been highly effective in reducing consumer and industrial energy costs, and reducing the environmental impacts associated with energy production, the new rule will undermine energy efficiency standards to the detriment of consumers and product manufacturers who comply with existing test procedures. State attorneys general contend that the rule violates the Energy Policy and Conservation Act of 1975, among other legal flaws. The petition for review on behalf of 14 states, the District of Columbia and the City of New York was filed in the U.S. Court of Appeals for the Second Circuit.

<https://www.nj.gov/oag/newsreleases21/MajorSource.Petition.pdf>

[https://www.nj.gov/oag/newsreleases21/Petition \(Aircraft\).pdf](https://www.nj.gov/oag/newsreleases21/Petition (Aircraft).pdf)

<https://www.nj.gov/oag/newsreleases21/OzoneNAAQPetition.pdf>

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<https://www.nj.gov/oag/newsreleases21/NSR.Petition.pdf>

<https://www.nj.gov/oag/newsreleases21/ESA Habitat.Complaint.pdf>

<https://www.nj.gov/oag/newsreleases21/Complaint. Migratory Birds.pdf>

<https://www.nj.gov/oag/newsreleases21/ScienceRule.Complaint.pdf>

<https://www.nj.gov/oag/newsreleases21/InterimWaivr.Petition.pdf>

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